



Estate Planning Overview

Legal Considerations Seminar

Foreign Service Institute

May 20, 2015

Tools in Estate Planning

- Powers of Attorney
- Living Will/Advance Medical Directive
- Titling of Property
- Wills
- Trusts
- Gifting
- Life Insurance

General Durable Power of Attorney

- Power to undertake any action relating to your assets that you could do personally
- Effective immediately or effective only in the event of disability (“Springing”)
- Avoids guardianship proceedings
- Null/void upon your death
- Requirements differ from state to state

Advanced Health Care Directive or “Living Will”

- Establishes individual preferences
 - ◆ **Use of Oxygen**
 - ◆ **Nutrition/Hydration**
 - ◆ **Pain Management**
 - ◆ **Organ Donation: driver's license is best**
- Identifies individuals to make health care decisions for you if you are unable to do so
- Null/void upon your death

Titling of Property

- Overrides the will
- Examples:
 - ◆ **Joint ownership (with survivorship)**
 - ◆ **Transfer on death and pay on death accounts**
 - ◆ **Revocable or irrevocable trust**
 - ◆ **Insurance**
 - ◆ **Retirement accounts**
 - ◆ **VA and DC permit Transfer on Death Deeds (not yet permitted in MD).**

Wills

- Take effect after death
- Funeral and other arrangements
- Specific bequests
- Appoints an executor and outlines executor's duties
- May appoint guardian for minor children
- May establish trusts
- (No will - state law applies as to distribution of assets and care of children)

Main Types of Trusts

- Testamentary
 - ◆ Established by your will
 - ◆ Assets do not avoid probate
 - ◆ Accounting requirement

Main Types of Trusts

- **Inter Vivos**
 - ◆ **Established during your life**
 - ◆ **Revocable vs. Irrevocable trusts**
 - ◆ **Irrevocable life insurance trusts**
 - ◆ **Bypass trusts, a/k/a credit shelter trust**
 - ◆ **Qualified terminal interest property trust**
 - ◆ **Personal residence trust**
 - ◆ **Charitable trust**
 - ◆ **Kiddie trusts and grandchildren's trust**

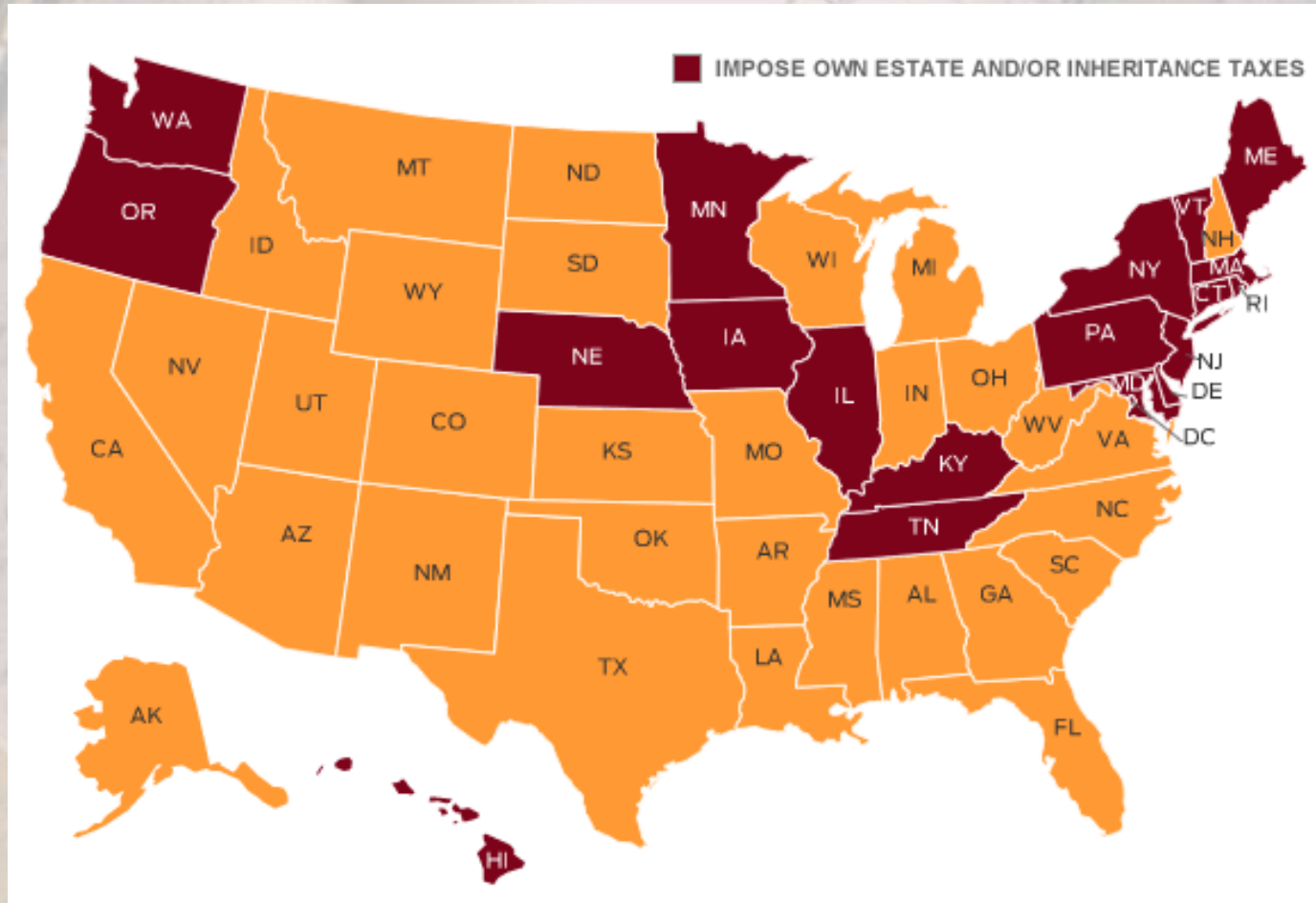
Estate Taxes

- Transfer between spouses who are U.S. citizens are tax-free
- Qualified Domestic Trust must be established for non-U.S. citizens
- Federal Estate Tax “Exemption” amount
 - ◆ **2015 and beyond:**
 - ◆ **\$5.43 M/individual**
 - ◆ **\$10.86M/couple with portability**
 - ◆ **Current tax rate – 40%**

Portability

- January 2013, Congress passed American Tax Relief Act of 2012 (“ATRA”) – made Portability “permanent”
- A surviving spouse can use deceased spouses (unused) exemption for his/her gift or estate tax purposes
- Must file a tax return upon death of first spouse to reserve right to “elect” portability

Several States have their Own Estate and/or Inheritance Taxes



“Separate” State Estate Taxes

- Approximately 15 states and the District of Columbia have their own estate and/or inheritance tax
- Virginia – **no estate tax**
- Maryland - **\$1M exemption (progressive w/ 16% maximum)/being phased to align with Federal exemption 2019.**
- District of Columbia – **\$1M exemption (16% maximum) – New bill plans to track the Federal with incremental increases (\$2M projected for 2016).**

Inheritance Taxes

- Approximately 6 states have their own inheritance tax which is normally paid by the recipient
- Virginia – no inheritance tax
- Maryland – **10% - payable by collateral (non-lineal) heirs**
- D.C.– no inheritance tax

Federal Gift Taxes

- Lifetime exemption of \$5.43M (tied to overall “exemption”).
- Annual gift exemption of \$14K per individual (\$28K if spouse joins in gift)
- Unlimited gifts to different individuals
- Annual transfers to a non-U.S. citizen spouse are tax-free up to \$147,000 in 2015 (adjusts annually)

Gifting Strategies

- Cash, appreciating/appreciated property
- Uniform Gifts to Minors Act/Uniform Transfers to Minors Act
- Medical expenses/tuition
 - Unlimited yearly if gifted directly to educational or health care institution
- Installment sales or loans
- Charitable giving

Spousal Rights

- **Foreign Service Benefit Default Rules:** Unless otherwise provided by court order or spousal agreement, a Former Spouse (“FS”) of a FSPS or former FSPS is entitled to 50% of participant’s retirement annuity and a pro-rata share of the maximum survivor annuity so long as:
 - 1) the FS divorced participant after February 15, 1981;
 - 2) Before commencement of payments of any benefits to the FS, the FS must not have remarried before age 55; and
 - 3) FS must have been married to FSPS or former FSPS for at least 10 yrs., during which at least 5 of such years, the participant was a member of the Foreign Service.
- **Spousal Elective Share Rights:** Omitted spouses.

Spousal Rights Cont.,

- **Spousal Elective Share Rights:**
 - ◆ Cannot disinherit a spouse without their consent in Virginia
 - ◆ Surviving spouse may make a claim against estate regardless of whether any provision for the spouse is made in a decedent's will or if the decedent dies intestate (without a will);
 - ◆ Six months to file from date of probating will or qualification of an administrator
 - ◆ 1/3 of decedent's augmented estate if decedent left surviving children (plus interest) or
 - ◆ 1/2 of decedent's augmented estate if decedent left no surviving children (plus interest)
 - ◆ Can waived by writing
 - ◆ Statutory rights are barred by desertion or abandonment
- **Omitted Spouses:** Applies if marry after Will is executed and don't update Will to include your spouse.

Intra-Family Loans

- ◆ Historically Low Applicable Federal Rate, published monthly by the IRS
- ◆ Short-term Rate: loans with terms < 3 years;
- ◆ Mid-term Rate: loans with terms >3 years, but <9 years;
- ◆ Long-term Rate: loans with terms >9 years

Annual AFRs for May 2015

Short-Term	Mid-Term	Long-Term
0.43%	1.53%	2.30%

Planning for Digital Assets

- Federal law and end-user agreements may prohibit access of Decedent's online assets and accounts
- Some states have begun to pass laws to deal with this emerging area as more of our estate goes "virtual"
- Privacy Expectation Afterlife and Choices Act (passed in VA-effective July 1, 2015)

When to Review an Estate Plan

- Major life events
 - ◆ **Inheritances**
 - ◆ **Career changes**
 - ◆ **Move out of state**
 - ◆ **Birth of a child**
 - ◆ **Marriage, Divorce, Death**
- Tax law changes
- Significant changes in values of assets
- Every 5 years

Questions?

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